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Souhrada, Keith Michael

The Diocese of Rochester aka Roman Catholic Diocese of
Rochester, a religious corporation
Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester,
NY formerly Church of the Annunciation of Rochester, New
York, a religious corporation
The National Boy Scouts of America Foundation dba The Boy
~

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State of New York

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SUPREME COURT STATE OF NEW YORK
COUNTY OF MONROE

-----X

KEITH MICHAEL SOUHRADA

Plaintiff,

v.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Index No. _____

THE DIOCESE OF ROCHESTER (a/k/a "Roman Catholic Diocese of Rochester"), a religious corporation;

ROMAN CATHOLIC PARISH OF ST. FRANCES XAVIER CABRINI, ROCHESTER NY (formerly "Church of the Annunciation of Rochester, New York"), a religious corporation,

THE NATIONAL BOY SCOUTS OF AMERICA FOUNDATION d/b/a THE BOY SCOUTS OF AMERICA; and

THE SENECA WATERWAYS COUNCIL, INC., BOY SCOUTS OF AMERICA,

Defendants.

-----X

Plaintiff, KEITH MICHAEL SOUHRADA, by and through undersigned counsel, brings this action against THE DIOCESE OF ROCHESTER (a/k/a "Roman Catholic Diocese of Rochester"); ROMAN CATHOLIC PARISH OF ST. FRANCES XAVIER CABRINI, ROCHESTER NY (formerly "Church of the Annunciation of Rochester, New York"); THE NATIONAL BOY SCOUTS OF AMERICA FOUNDATION d/b/a THE BOY SCOUTS OF AMERICA; and THE SENECA WATERWAYS COUNCIL, INC., BOY SCOUTS OF AMERICA and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

I. JURISDICTION AND VENUE

1. This Complaint arises from the sexual battery of Plaintiff Keith Souhrada by Fr. Robert O'Neill on or about February 1994. Plaintiff was 16 years old at the time of the sexual abuse alleged herein.

2. The Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302 for Defendants The Diocese of Rochester; Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY; and The Seneca Waterways Council, Inc., Boy Scouts of America in that the Defendants reside in New York and committed tortious acts within the State.

3. The Court has personal jurisdiction over the Defendant The National Boy Scouts of America Foundation pursuant to CPLR § 301 and § 302 as it committed tortious acts within the State, and/or committed tortious acts without the State causing injury to a person within the State.

4. Venue is proper in this Court pursuant to CPLR § 503 because Defendants The Diocese of Rochester, Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY, and The Seneca Waterways Council, Inc., Boy Scouts of America have their principal places of business in Monroe County.

5. Plaintiff brings this suit within the extended time period as provided for in Sections 208 and 214-G of the Civil Practice Law.

6. Jurisdiction is proper because this Complaint seeks monetary damages in excess of \$25,000.00, exclusive of interest, costs, and attorney's fees.

II. PARTIES

7. Plaintiff Keith Michael Souhrada ("Plaintiff") is an adult resident of the State of California and is otherwise *sui juris*.

8. At all times material to the Complaint, Defendant The Diocese of Rochester (a/k/a “The Roman Catholic Diocese of Rochester,” also referred to herein as “Defendant Diocese” and “Diocese”) is a Roman Catholic diocese and religious corporation organized pursuant to the Religious Corporations law, licensed and doing business in the State of New York with a principal place of business at 1150 Buffalo Road, Rochester, New York 14624. At all times material hereto, Defendant Diocese had programs which sought out the participation of children in the Diocese’s activities. Defendant Diocese has had the power to appoint, supervise, monitor, and fire each person working with children on behalf of the Diocese. At all relevant times, The Diocese of Rochester oversaw, managed, controlled, directed, and operated parishes, schools and churches within its geographical boundaries, including Church of the Annunciation of Rochester, New York, where acts and omissions giving rise to this Complaint occurred, and Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY, the legal successor to Church of the Annunciation of Rochester, New York. At all relevant times, The Diocese of Rochester hired, trained, oversaw, managed, controlled, and directed priests assigned to work in parishes or churches of the Diocese, and priests, including Fr. Robert F. O’Neill, who engaged in activities with youth-serving organizations, including Defendants The National Boy Scouts of America Foundation (referred to herein as “Defendant BSA”) and The Seneca Waterways Council, Inc., Boy Scouts of America (referred to herein as “Defendant Council”). Defendant The Diocese of Rochester can be served at 1150 Buffalo Road, Rochester, New York 14624, by delivering the summons and complaint to its authorized agent Bishop Salvatore R. Matano, or to said Defendant’s attorney, Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

9. Defendant Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY

(hereinafter "St. Frances Xavier Cabrini") is a Roman Catholic parish within and under the authority of The Diocese of Rochester and a religious corporation organized pursuant to the Religious Corporations law with a principal place of business at 124 Evergreen St., Rochester, NY 14605 in Monroe County, New York. Through various corporate mergers, St. Frances Xavier Cabrini is the legal successor to Church of the Annunciation of Rochester, New York, and based upon information and belief St. Frances Xavier Cabrini has assumed the liabilities of Church of the Annunciation of Rochester, New York, alleged herein. Defendant St. Frances Xavier Cabrini can be served by delivering the summons and complaint to its attorney Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

10. The National Boy Scouts of America Foundation d/b/a The Boy Scouts of America ("Defendant BSA") was and is a congressionally chartered corporation and a registered, foreign not-for-profit corporation in the State of New York, with its principal place of business and its agent for service located at 1325 W. Walnut Hill Lane, Irving, TX 75038.

11. The Seneca Waterways Council, Inc., Boy Scouts of America (hereinafter "Seneca Waterways" or "Defendant Council") is a non-profit corporation organized under the laws of the State of Minnesota with its principal place of business located at 2320 Brighton Henrietta Town Line Road, Rochester, New York 14623. Seneca Waterways is the legal successor-in-interest to the Otetiana Council, Inc., Boy Scouts of America, and based upon information and belief has assumed the liabilities of the Otetiana Council, Inc., Boy Scouts of America alleged herein.

12. The provisions of Section 1602 of the CPLR do not apply to the within action including nondelegable duty and/or the doctrine of respondeat superior.

III. FACTS COMMON TO ALL CLAIMS AGAINST DEFENDANTS THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

a) Defendants' Responsibility for the Abuse Committed by Fr. O'Neill

13. At all times relevant to the allegations set forth herein, Father Robert F. O'Neill was a priest employed, trained, ordained, assigned, supervised, and managed by the Defendant The Diocese of Rochester and was an employee and/or agent for said Defendant. All acts and omissions of Fr. O'Neill were done in the course and scope of his employment and/or agency for Defendant The Diocese of Rochester.

14. At all times relevant to the allegations set forth herein, Fr. Robert O'Neill was a priest employed, trained, supervised, and managed by the Church of the Annunciation of Rochester, New York (hereinafter "Church of the Annunciation") and was an employee and/or agent for said entity. All acts and omissions of Fr. O'Neill were done in the course and scope of his employment and/or agency for Church of the Annunciation. Defendant St. Frances Xavier Cabrini is the legal successor to Church of the Annunciation, and upon information and belief, has assumed all liabilities of Church of the Annunciation alleged herein. As such, all references herein to Church of the Annunciation can be legally attributed to St. Frances Xavier Cabrini.

15. Defendant The Diocese of Rochester ordained Fr. Robert F. O'Neill as a Roman Catholic priest on June 2, 1962.

16. The Diocese of Rochester first assigned Fr. O'Neill to serve as associate pastor at Church of the Nativity of the Blessed Virgin Mary in Brockport, New York. He remained in that position until 1967 when The Diocese of Rochester transferred Fr. O'Neill to Holy Cross Church in Rochester, New York.

17. Fr. O'Neill served as an associate pastor at Holy Cross Church and leader of the Charlotte Teen Council until June 1973, when he was elected to the Diocesan Tribunal. The

Diocesan Tribunal is a judicial forum tasked with adjudicating parishioner rights under canon law, particularly marital disputes. Fr. O'Neill became the Officialis, or Chief Judge, of the Diocesan Tribunal in June 1974. Fr. O'Neill served on the Diocesan Tribunal for many years while also performing pastoral duties at various parishes within The Diocese of Rochester.

18. In June 1980, Fr. O'Neill was elected Vice President of the Diocesan Priests' Council. He became the Council's President in June 1981.

19. In April 1983, Fr. O'Neill was elected President of the New York State Priests' Council. While Fr. O'Neill was serving in these adjudicatory roles for The Diocese of Rochester and the State Priests' Council, Fr. O'Neill lived in residence at several parishes within The Diocese of Rochester, including at St. Boniface Church and St. John the Evangelist Church.

20. In June 1987, The Diocese of Rochester assigned Fr. O'Neill to work as a pastor at the Church of the Annunciation, located at 1754 Norton St., Rochester, NY, 14609. Fr. O'Neill was also affiliated with Bishop Kearney High School and the local Boy Scouts of America programs at this time. During the times relevant to the allegations herein, Fr. O'Neill was working as a pastor at Church of the Annunciation and was an agent of the same.

21. Within the course and scope of his employment and/or agency, Fr. O'Neill mentored Catholic boys, including Plaintiff, recruited altar boys, and recruited and/or encouraged Catholic boys, including Plaintiff, to consider a vocation in the Catholic Clergy, including the priesthood.

22. Within the course and scope of his agency for Defendant BSA and Defendant Council, Fr. O'Neill mentored boys, including Plaintiff, and said mentorship included mentoring and advising boys like Plaintiff who were considering the priesthood in the Roman Catholic Church.

23. Through his position and affiliation at, within, or for the Defendants The Diocese of Rochester and St. Frances Xavier Cabrini (by way of Church of the Annunciation), Defendant Diocese and Church of the Annunciation, along with Defendant BSA, put Fr. Robert O'Neill in direct contact with the Plaintiff through a community activity sponsored by the Boy Scouts of America in Rochester, New York.

24. In 1993, Fr. O'Neill was appointed to a second six-year term as pastor at Church of the Annunciation. He briefly took a sabbatical between March and June of 1995 for undisclosed reasons.

25. In 1996, The Diocese of Rochester assigned Fr. O'Neill to serve as co-administrator of St. Philip Neri Church while also continuing his duties as pastor at Church of the Annunciation.

26. In 1998, The Diocese of Rochester transferred Fr. O'Neill to serve as the administrator of St. Christopher Church in Chili, NY and in April 1999, the Diocese appointed Fr. O'Neill as pastor of St. Christopher Church.

27. In June 2001, The Diocese of Rochester removed Fr. O'Neill from his pastorate, citing his declining health as the reason for his removal. Fr. O'Neill officially retired in May 2002.

28. Around that same time, in May 2002, three men accused Fr. O'Neill of sexual misconduct and sexual abuse when the men were children during the 1970s and 1980s. After investigating these claims and deeming them credible, The Diocese of Rochester placed restrictions on Fr. O'Neill. Fr. O'Neill could no longer participate in any ministry, wear clerical clothing, or reside in parish or Diocesan housing. Seven additional survivors of Fr. O'Neill joined the lawsuit in June 2002.

29. Through this lawsuit, several details about the Diocese's knowledge of Fr. O'Neill's crimes were uncovered by the press. Notably, two minor parishioners accused Fr.

O'Neill of sexual misconduct between 1977 and 1981; the fathers of these parishioners jointly sent a letter to Dennis Hickey, the Auxiliary Bishop of The Diocese of Rochester from 1968 to 1990.

30. According to Michael Tedesco, the spokesman for The Diocese of Rochester at the time the above-mentioned lawsuit was filed, the Diocese had investigated a complaint about O'Neill in the 1970's involving inappropriate behavior with a minor. The Diocese sent O'Neill away for treatment at an undisclosed location but did not remove him from ministry nor place any restrictions on his access to and interaction with minors.

31. Defendant The Diocese of Rochester received parishioner complaints about Fr. O'Neill for years. In 1972, parishioners at Holy Cross Church approached The Diocese of Rochester with concerns that O'Neill was heavily drinking and acting inappropriately with boys. Fr. O'Neill was removed from his position at Holy Cross shortly thereafter and assigned to the Diocesan tribunal. Three boys molested by O'Neill and another priest in The Diocese of Rochester approached former Bishop Matthew Clark in approximately 1980, and explained to Bishop Clark, in detail, that Fr. O'Neill had sexually molested them. Bishop Clark failed to remove Fr. O'Neill from ministry at that time or place restrictions on his access to and interaction with minors.

32. Fr. O'Neill reportedly had many people stay with him in residence at his assigned churches throughout his ministerial career, including at least one teenage boy during the 1980s. The Diocese had knowledge that the boy was staying on Church property with Fr. O'Neill.

33. A parishioner at St. Christopher's Church in Chili complained to The Diocese of Rochester about Fr. O'Neill in 1998. At that time, she received assurances from The Diocese of Rochester that The Diocese had instructed Fr. O'Neill to refrain from taking children to his cottage.

34. In December 2002, the above-mentioned lawsuit against The Diocese of Rochester and Fr. O'Neill was dismissed on statute of limitation grounds. Due to the recent passage of the

Child Victims Act in New York, the previous statute of limitations for child sexual abuse cases does not apply to this action.

35. Fr. Robert F. O'Neill died in 2005.

36. On information and belief, Fr. O'Neill was a notorious sexual predator who violated many boys while under the employment and/or agency of Defendant The Diocese of Rochester.

37. Prior to Fr. O'Neill's abuse of Plaintiff, Defendant Diocese had actual notice that Fr. O'Neill was molesting boys and posed a risk of sexual harm to children, including Plaintiff. Defendant Diocese enhanced that risk by assigning Fr. O'Neil to positions that exposed him to children while holding Fr. O'Neill out as safe with children and covering up his misconduct with minors. Defendant Diocese further chose to not report the complaints of Fr. O'Neill's misconduct with minors to authorities. Defendant Diocese put its interests over the protection of children, including Plaintiff, by covering-up Fr. O'Neill's dangerous propensities and choosing not to warn children, including Plaintiff, or their parents that Fr. O'Neill posed a known risk of harm to children. Defendant Diocese likewise put its economic interests above the protection of children by keeping a known child predator in circulation as a priest who could say mass and take collections.

38. By holding Fr. O'Neill out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendants The Diocese of Rochester and Church of the Annunciation entered a special relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants' undertaking the care and guidance of the then vulnerable Plaintiff, Defendants held a position of empowerment over Plaintiff.

39. Furthermore, Defendants The Diocese of Rochester and Church of the Annunciation, by holding themselves out as being able to provide a safe environment for children,

solicited, and/or accepted this position of empowerment. This empowerment prevented the Plaintiff from effectively protecting himself, and Defendants thus entered a special relationship with Plaintiff. By holding themselves out as a safe, moral, and trusted institution to Plaintiff's parents, Defendants induced Plaintiff's parents to entrust their child to Defendants and thereby deprived Plaintiff of the protection of his family.

40. At all times material, Fr. Robert O'Neill's sexual abuse of Plaintiff was foreseeable.

41. The problem of clergy sexual abuse of minors is well-documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book of Gomorrah* that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6). Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo*, about the punishment for "A cleric or monk who seduces youths or young boys" being public flogging, loss of tonsure and six months in jail, among other punishment. In 1143 or 1144, a professor at the University of Bologna named Gratian, known as the "Father of the Science of Canon Law," identified in his work the *Decretum*, the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

42. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, which was based upon the 1917 Code of Canon Law which stated:

Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.

43. This knowledge that Catholic clergy were sexually abusing minors continued through the middle ages and into recent history. In 1962, Pope John XXIII approved the publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law for solicitation of sex in the confessional. This document contained prohibitions prohibiting clergy from having

sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world and was to be kept by them with the deepest secrecy. In addition, this document reflected the Catholic church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

44. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order of priests called the Servants of the Paracletes. This religious order was founded in order to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he had already treated priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, "code 3," to describe the offense. By 1966, the Paracletes began specializing in treatment of pedophile Catholic clergy.

45. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that as early as February 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

46. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood" to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity manifested itself in heterosexual and homosexual activity. In 1990, psychologist and priest, A.W. Richard Sipe, published a study involving 1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

47. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled "*The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner*" by Fr. Thomas Doyle, F. Ray Mouton and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A significant portion of this document describes how significant that the sexual abuse of children by Catholic clergy had become.

48. Defendants allowed Fr. Robert O'Neill to have unsupervised and unlimited access to minor children, at Church of the Annunciation and at the Boy Scouts of America in Rochester, New York, located at the time within The Diocese of Rochester.

49. At all times material, Fr. Robert O'Neill was employed by Defendants The Diocese of Rochester and Church of the Annunciation.

50. At all times material, Fr. Robert O'Neill remained under the direct supervision, employ, and control of the Defendants The Diocese of Rochester and Church of the Annunciation.

51. Upon information and belief, before Plaintiff was sexually abused by Fr. Robert O'Neill, Defendants had actual or constructive knowledge of material facts regarding Fr. Robert O'Neill's sexual misconduct, impulses, and behavior.

52. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Fr. O'Neill's problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

b) Plaintiff Keith Souhrada's Introduction to Fr. Robert O'Neill; The Abuse

53. At all times material, Plaintiff Keith Souhrada revered and trusted the Roman Catholic Church, The Diocese of Rochester, the Bishop of The Diocese of Rochester, priests, Fr. O'Neill, and all Roman Catholic clergy. Plaintiff was raised in a devout Roman Catholic family,

regularly celebrated mass, received the sacraments, and participated in church-related activities. Plaintiff was taught to believe priests, including Fr. O'Neill, were special, sacred, pure and better than lay people. He was taught to trust priests, to do what they said, and to never disparage them.

54. At the time of the events described herein, Defendants The Diocese of Rochester and/or Church of the Annunciation was the legal owner and/or tenant/occupier of the church located at 1760 Norton St. Rochester, New York 14609. Both said Defendants had control over the Church of the Annunciation and its premises.

55. At the time of the events described herein, Fr. Robert F. O'Neill was a priest in residence at Church of the Annunciation, where he served as pastor.

56. Defendants The Diocese of Rochester and the Church of the Annunciation actively participated in Boy Scouts of America activities, including involving clergy leadership, including Fr. O'Neill, to assist with scouting activities.

57. In approximately February 1994, when Plaintiff was approximately 16 years old, Plaintiff was an eagle scout. While Plaintiff was going through the board review process for Eagle Scouts, he indicated that he was interested in religion, philosophy, and politics, among other subjects. Defendant BSA, Defendant Council and Defendant Diocese assigned Fr. Robert O'Neill as an adult mentor and counselor for Plaintiff. Fr. O'Neill was active with the local Boy Scout programs at that time.

58. Fr. O'Neill contacted Plaintiff (also referred to herein as "Keith") by phone to introduce himself and arrange a meeting at the Rectory of Church of the Annunciation to meet Keith prior to the annual Eagle Scout luncheon. Keith and his mother met Fr. O'Neill at Church of the Annunciation for their prearranged meeting. While there, Fr. O'Neill received a call from Rochester General Hospital to administer the Sacrament of the Sick for a patient. Fr. O'Neill asked

if Plaintiff wanted to accompany him and help him serve the sacrament. Plaintiff's mother left Plaintiff with Fr. O'Neill at that time. Plaintiff and Fr. O'Neill attended the Eagle Scout luncheon together after leaving the hospital. Fr. O'Neill then drove Plaintiff home.

59. While Plaintiff and Fr. O'Neill were alone at Church of the Annunciation, Fr. O'Neill gave Plaintiff a tour of the church. On this tour, Fr. O'Neill rubbed Plaintiff's back and touched Plaintiff's upper thighs. Plaintiff was uncomfortable by this touching, which was unwanted and offensive. Fr. O'Neill touched Plaintiff in a similar way while the two were driving in the car to the hospital and to the Eagle Scout luncheon.

60. After the Eagle Scout luncheon, while dropping Plaintiff off at his home, Fr. O'Neill invited Plaintiff to attend a youth group meeting to be held at his cabin near Chaumont, New York. Fr. O'Neill represented to Plaintiff and Plaintiff's parents that several boys would be attending the youth group as well. Plaintiff and his parents agreed that Plaintiff would go. Fr. O'Neill picked Plaintiff up from his house the following Saturday. Plaintiff eventually learned that he was the only boy spending that weekend with Fr. O'Neill. Fr. O'Neill claimed that all the other boys he had invited had cancelled.

61. While travelling to the cabin, Fr. O'Neill engaged Plaintiff in confession. When Fr. O'Neill and Plaintiff got to the cabin, they took a walk, and Fr. O'Neill again tried to engage Plaintiff in confession. During confession, he asked Plaintiff many personal questions, which Plaintiff felt obligated to answer, having been told by Fr. O'Neill that whatever he said would be confidential. Increasingly, the inquiries focused on sexual themes, especially masturbation.

62. Fr. O'Neill made dinner for him and Plaintiff, which consisted of mushrooms with bleu cheese, cooked in the toaster oven. The only beverages Fr. O'Neill made available to Plaintiff were alcoholic. Prior to this trip, Plaintiff had not consumed alcohol before. Plaintiff drank a little

vodka at the cabin.

63. That night, after they went to bed, Fr. O'Neill engaged in unpermitted, harmful, and offensive sexual contact with the Plaintiff without Plaintiff's consent. Fr. O'Neill instructed Plaintiff to partially disrobe and began touching him under his shirt and on his genitals. Fr. O'Neill then performed oral sex on Plaintiff and instructed Plaintiff to perform oral sex on him. Fr. O'Neill then masturbated himself to climax.

64. Throughout the above time period, Fr. O'Neill spoke to Plaintiff about the priesthood as a spiritual and religious mentor, albeit a misguided one. Plaintiff was uncomfortable and thought it was sacrilegious that Fr. O'Neill would talk to him about religion while performing sexual acts on Plaintiff.

65. The next morning, Fr. O'Neill and Plaintiff went on another walk, but Plaintiff was visibly uncomfortable being in Fr. O'Neill's presence and so Fr. O'Neill suggested they return home early. When they got back to Plaintiff's home in Rochester, Plaintiff bolted from the car and ran to his room, despite his mother's plea that he thank Fr. O'Neill and say goodbye. Plaintiff refused to have any contact with Fr. O'Neill from that point forward despite multiple attempts by Fr. O'Neill to contact him.

66. Plaintiff kept the abuse a secret for many years. A few years after the allegations outlined above surfaced about Fr. O'Neill's sexual molestations, Plaintiff shared with his parents the abuse he suffered by Fr. O'Neill. His mother reported Plaintiff's account of the abuse to her local priest who told her he would speak with the Bishop of the Diocese of Rochester. Shortly thereafter, Plaintiff was contacted by a so-called victims' advocate at The Diocese of Rochester who promised him the Church would care for him. Plaintiff never heard from her or anyone else from The Diocese of Rochester again.

67. As a direct and proximate result of Fr. O'Neill's offensive and unwanted sexual touching, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income and other damages, past and future.

68. As a direct and proximate result of Fr. O'Neill's offensive and unwanted sexual touching, Plaintiff has been prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of his life.

69. As a direct and proximate result of Fr. O'Neill's offensive and unwanted sexual touching, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

IV. FACTS COMMON TO ALL CLAIMS AGAINST THE NATIONAL BOY SCOUTS OF AMERICA FOUNDATION d/b/a THE BOY SCOUTS OF AMERICA, AND THE SENECA WATERWAYS COUNCIL, INC.

70. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

71. At all times relevant to the tortious conduct alleged in this complaint, Plaintiff was an unemancipated minor who was invited to participate in meetings, events and activities run and sponsored by BSA and the Seneca Waterways Council, Inc.

72. In 1916, Congress granted BSA a federal charter, now codified as 36 U.S.C. Ch. 309. Under that Charter, Congress granted BSA the exclusive right to BSA's name, emblems, badges, and descriptive words and markings.

73. Since 1910, BSA has derived millions of dollars a year licensing the rights to its name, emblems, scouting paraphernalia, and BSA-branded merchandise to affiliated scouting

organizations throughout the United States and abroad (See 36 U.S.C. §80305). BSA has realized income from these assets by marketing them to parents and their children, including Plaintiff and his parents. In addition to an exclusive license, BSA enjoys numerous tax payer subsidies, including: (1) free access to national forest lands (16USC § 539f); (2) free use of Defense Department equipment and facilities for BSA Jamborees (10 U.S.C. §2554); (3) free ground and air transportation, communications, emergency, and technical services from the National Guard (32 U.S.C. § 508); (4) free use of meeting facilities, transportation, and support services at United States military bases world-wide (10 U.S.C. §2606); (5) free firearms, ammunition, repairs, supplies, and marksmanship training equipment (36 U.S.C. §40731); (6) free military surplus (10 U.S.C. Ch. 943); and (7) Department of Agriculture grants (7 U.S.C. §7630).

74. BSA's marketing includes encouraging parents to enroll their children in the BSA. Enrollment secures parents' and children's commitment to follow a system that encourages parents to entrust their children's health and safety to BSA. This entrustment empowers BSA to secure each child's oath to uphold the "Scout Law," to adopt the "Scout" identity, and to adhere to a system that requires children to engage in activities that expose them to adults and others. This system includes over-night outings, camping events, and trips away from parents. The system is reward-based, obligating the child to purchase emblems, badges, and other Scouting paraphernalia, which in turn creates profit for the organization.

75. BSA implements scouting programs through local Boy Scouts of America councils to which it issues licenses to the Boy Scouts of America name, emblems, badges, markings and youth programs. BSA requires Local councils and troops within a local council to strictly adhere to BSA's organizational charter and "Standards of Leadership" requirements.

76. At all relevant times, the Defendant Council and troop to which Plaintiff was a

member were the agents of the BSA and were subject to BSA's authority and control.

77. BSA is one of the largest non-profits in the United States, with income exceeding \$780 million dollars a year. BSA is the largest youth organization in the United States, serving more than 2.7 million youth members, ages ten to eighteen, with over 1 million adult volunteers.

78. At all times material to the allegations herein, the problem of sexual abuse of minors by adult Boy Scout Leaders and volunteers was foreseeable. Shortly after its inception, Defendant BSA became aware that a significant number of its adult Boy Scout leaders, including community leaders and mentors such as Fr. O'Neill, ("Scout Leaders") were using their position of trust and authority as Scout Leaders to manipulate and sexually abuse youth participating in Defendant BSA's scouting program.

79. Since its inception, BSA aggressively marketed the wholesomeness and safety of its programs to the American public. Simultaneously, BSA concealed from scouts and their parents BSA's certain knowledge that pedophiles had been infiltrating BSA in large numbers for many years. BSA also misrepresented to scouts and their parents that scouts were safe in scouting programs, when, in fact, scouts were at an unreasonably heightened risk of sexual abuse by adult Scout Leaders and volunteers. BSA made said misrepresentations to Plaintiff and his parents.

80. By the early 1920s, Defendant BSA implemented an internal "Red Flag" system to identify Scout Leaders and volunteers whom Defendant BSA considered "ineligible" to hold positions as Scout Leaders and volunteers. (This internal system eventually became known as the "Ineligible Volunteer Files." (hereafter "I.V. Files") Historically, the most common reason for a Scout Leader and volunteers to be placed in the I.V. Files has been allegations of sexual abuse of boys. This subset of Ineligible Volunteer files has been referred to by Defendants as the "Perversion Files."

81. By 1935, Defendant BSA had already identified and removed over 1,000 adult men from their positions as Scout Leaders for sexually abusing boys involved in Defendant BSA's scouting program.

82. Between 1935 and 1971, Defendant BSA identified thousands of additional Scout Leaders who were believed to have sexually abused boys in Defendant BSA's scouting program.

83. Not all of these men were removed from their positions as Scout Leaders. Rather, at some point prior to 1955, Defendant BSA implemented a secret, internal "probation program." Under Defendant BSA's "probation program," a significant number of Scout Leaders believed to have sexually abused boys were allowed to continue on as Scout Leaders with access to boys. Neither boy scouts nor their parents were informed if a Scout Leader was on "probation" for sexually abusing boys.

84. Defendant BSA went to significant lengths to keep the existence of their "Perversion File" system and the problem of pedophile Scout Leaders and volunteers a secret from scouts and the public. Local councils were instructed - and agreed - not to keep Perversion File materials at their offices, but rather to send everything to BSA national.

85. At some point between 1935 and 1971, Defendant BSA became aware that their internal "probation" program allowed pedophile Scout Leaders and volunteers an opportunity to continue to abuse boy scouts. Defendant BSA knew that, in some of these instances, Scout Leaders previously accused of sexual abuse of boys went on to reoffend against other boys. Nevertheless, Defendant BSA continued its probation program.

86. Defendant BSA was also aware that local councils (like Defendant Seneca Waterways) were sometimes unaware of the existence of the I.V. File system, did not know how to properly respond to allegations of child sexual abuse in their programs, did not take adequate

precautions to assure adults they invited to participate with scouts were safe, and sometimes inadequately responded to such allegations resulting in allegations of further abuse of other boys. Despite this knowledge, Defendant BSA did nothing prior to 1971 to inform, educate or train their local councils (including Defendant Seneca Waterways) in how to identify, prevent or respond to incidents of child sexual abuse in their scouting programs.

87. In addition to knowing that its probation program exposed children to known pedophiles, and that Councils were unaware of the I.V. system, BSA gained unique knowledge through its repository of informative data containing the identities of pedophiles that had successfully infiltrated scouting. The I.V. files highlight BSA's vulnerabilities, including pedophiles' techniques used to enter scouting, pedophiles' patterns for grooming victims, and widely found biographical and behavioral characteristics shared by pedophiles that had entered or were attempting to enter scouting. For a century BSA has known of BSA's distinctive characteristics that render scouts particularly prone to pedophilic abuse.

88. By 1935, BSA had accumulated approximately 2,000 files on pedophiles that had successfully infiltrated or attempted to infiltrate its program. Between 1935 and 1971, Defendant BSA received thousands of reports of Scout Leaders and volunteers sexually abusing boys in their programs. These reports were continuous in frequency over time and were spread throughout the geographic bounds of the Defendant BSA's scouting programs.

89. In the 1970's, BSA recognized the potential liabilities represented by possessing and maintaining the I.V. files. By 2005, BSA's secret cache of files on pedophiles exceeded 20,000. Over the course of two years in the early 1970s, three BSA executives reviewed and permanently destroyed thousands of I.V. files. BSA executives kept no retention logs showing which or how many of the files BSA destroyed. BSA made no contemporaneous record of its

criteria in determining which files to destroy and which to save. Approximately 6,000 files survived BSA's file-purge and are in BSA's possession. Approximately 1900 of those files are now in the public domain. (The exact number of sexual abuse reports is unknown, in part because of the mid-1970s file purge.) These reports demonstrated to Defendant BSA that it had a continuous and systemic problem of Scout Leaders and volunteers sexually abusing boys participating in the Defendants' scouting program.

90. On information and belief, at some point between approximately 1955 and 1971, the Otetiana Council (the predecessor to the Seneca Waterways) also became aware that Scout Leaders and other participating adults within the BSA posed a danger of sexually abusing boy scouts.

91. Defendants' knowledge of the danger of sexual abuse of boys in scouting included knowledge about how pedophile Scout Leaders and other participating adults accomplished their abuse. Prior to 1971, Defendants knew or should have known that pedophile Scout Leaders and other participating adults groomed their victims to accomplish their abuse and understood how such grooming was accomplished (including winning the trust of the victim and spending time alone with the victim).

92. The I.V. files demonstrate that BSA had evidence (1) that scouting attracts pedophiles at an alarming rate and (2) of scouting's distinctive characteristics that make it attractive to pedophiles, including:

- a. Scouting provides a pedophile access to boys alone and away from their parents in secluded settings like campouts, overnights in secluded locations and overnight hikes;
- b. Scouting provides opportunities for a pedophile to seduce a boy by getting him into situations where the boy has to change clothing or spend the night with him;

- c. A pedophile Scout Leader can, depending on the pedophile's preferred victim age, volunteer for and be sure to have access only to boys of a certain age;
- d. BSA conditions boys to the concept of strict obedience to the Scout Leader and volunteering adults, a bonding mechanism that pedophiles utilize;
- e. BSA promotes the idea of secret ceremonies, rituals, and loyalty oaths, all of which help facilitate a pedophile's efforts to keep his victims silent and compliant;
- f. BSA conducted no criminal background checks on its volunteers;
- g. BSA did not prohibit adults from sleeping with boys overnight;
- h. BSA did not prohibit adult leaders from spending time alone with individual scouts;
- i. BSA did not prohibit adult Scout Leaders or volunteers from having contact with scouts outside of authorized scouting activities;
- j. For decades, BSA re-admitted pedophiles it had previously removed for child abuse after a period of BSA "probation," thereby exposing unsuspecting children to sexual abuse;
- k. BSA had a practice of not reporting scout abuse incidents to law enforcement;
- l. BSA had a pattern of reaching an accommodation with a pedophile, in which the pedophile would resign from scouting and the BSA would agree not to report the child sexual abuse to civil authorities;
- m. BSA refused requests to share its list of known abusers with other youth organizations, knowing that pedophiles it had ejected often joined other youth-serving organizations;
- n. BSA refused to produce its I.V. files to its review board and scout-safety consultants, who were endeavoring to develop and implement meaningful safeguards and barriers to pedophile infiltration;

o. BSA refused to fingerprint, photograph or perform background checks on its adult volunteers, allowing removed pedophiles using an alias to sneak back in to scouting through another troop;

p. BSA refused to utilize widely accepted organizational best practices that would establish reasonable barriers to intrusion by pedophiles;

q. BSA refused to educate local councils, staff, and troop leaders regarding the true risks posed by pedophiles to scouts; and

r. BSA refused to effectively monitor local councils and troops to ensure that appropriate safeguards were being used in the selection and retention of adult Scout Leaders.

93. Prior to 1971, Defendant BSA also knew or should have known that its I.V. File system did not function as it was intended, was flawed, and in many cases ineffective to address the sustained and systemic problem of sexual abuse of scouts by Scout Leaders and other adult participants.

94. Despite their knowledge of the danger of sexual abuse of boys in scouting, at no time prior to 1971 did Defendants warn boys in their programs (or their parents), including Plaintiff and his parents, about this known danger or implement reasonable and feasible child abuse prevention policies. Nor did BSA alert authorities to the nature and scope of this known danger. Instead, Defendants intentionally and actively concealed the continuous and systemic danger of sexual abuse of boys in their program by Scout Leaders and adult volunteers, including Fr. O'Neill. Defendants actively promoted and represented to the public, including Plaintiff and his parents, that their scouting programs were safe and wholesome, and their Scout Leaders and community participants, including Fr. O'Neill, were safe and trustworthy.

95. At all times relevant to this Complaint, Defendants invited participation of boys,

including Plaintiff in this case, in their Scouting program and selected adults, including Fr. O'Neill, to serve as Scoutmasters or in similar leadership positions as Scout Leaders or community participants.

96. BSA continues to make false and misleading public statements regarding the risks of sexual abuse in scouting; continues to minimize and downplay the harm of sexual abuse to children in scouting; fails to reach out to provide support and assistance to boys it knows were sexually abused by adult Scout Leaders, volunteers, and community participants; and continues to deny the truth about its historical knowledge of the nature and extent of sexual abuse of scouts by adult Scout Leaders.

97. BSA has known for decades that scouting involved an unreasonably high risk of sexual abuse by adult Scout Leaders. BSA made repeated false counterfactual claims that the number of pedophiles in scouting was comparatively small, that scouts were reasonably safe from sexual abuse by adult Scout Leaders, and that BSA is not a magnet for pedophiles, all of which BSA made (1) knowing that the claims were false or (2) with reckless disregard for the truth or falsity. Plaintiff alleges that he and his parents trusted BSA and that he and his parents reasonably relied upon the BSA's representations that it presented a moral and safe place for boys.

98. Defendants selected or accepted Fr. O'Neill as a community participant and sponsor in its scouting program to interact with its scouts. Defendants assigned Fr. O'Neill as an adult mentor to Plaintiff.

99. Defendants authorized and empowered Fr. O'Neill to interact with its scouts as a community participant in the scouting program including the authority and power: to provide instruction, counseling, moral guidance, and physical supervision of boys participating in Boy Scout programs and activities, including Plaintiff; to enforce the rules governing the boys'

participation; and to undertake other duties. Defendants knew that as part of his duties as a community participant, Fr. O'Neill would be in a position of trust, confidence, and authority over the boys involved in the Scout Program, including Plaintiff. Defendants retained the right to control the means and methods used by volunteer participants, including Fr. O'Neill, in fulfilling these duties for Defendants.

100. As a BSA community partner and participant, Fr. O'Neill befriended Plaintiff; gained the trust and confidence of Plaintiff and his family as an instructor, guide, mentor, counselor, and authority figure; and gained the permission and support of Plaintiff's family to spend substantial periods of time alone with Plaintiff. As a community partner and participant, Fr. O'Neill also gained the directive of Plaintiff's parents to minor Plaintiff that he respect those in authority with the BSA and Seneca Waterways, including Fr. O'Neill.

101. Thereafter, Fr. O'Neill acted as a scout counselor toward Plaintiff, supervised him during what was purported to be a scouting outing and activity, and exercised authority in loco parentis over Plaintiff during this alleged scouting event.

102. This alleged scouting outing and activity was conducted in a geographically remote areas without any means of communication between Plaintiff and his parents.

103. The circumstances surrounding the alleged scouting outing and activity deprived Plaintiff of normal opportunities of self-protection.

104. There was a special relationship between Plaintiff and each Defendant giving rise to a duty by each Defendant to protect Plaintiff from harm.

105. Fr. O'Neill's primary contact with Plaintiff was through Fr. O'Neill's position of leadership and authority in Defendants' scouting program. At all times relevant, Fr. O'Neill was an agent of Defendants. Fr. O'Neill was also under Defendants' control, dominion and supervision.

106. As a result of Fr. O'Neill's authorized conduct as a scout community volunteer and participant, Plaintiff was conditioned to trust Fr. O'Neill, to comply with his directions, and to respect Fr. O'Neill as a person of authority, including in moral and ethical matters.

107. Using the power, authority and trust of his positions within the BSA and Seneca Waterways, and availing himself of Defendants' representations that the Boy Scouts were moral and safe places for boys, Fr. O'Neill induced and directed Plaintiff to engage in sexual acts with Fr. O'Neill while Plaintiff was a minor (hereinafter "the sexual abuse"). Specifically, Fr. O'Neill sexually abused Plaintiff in September 1994 by touching his genitals, performing oral sex on him, and inducing Plaintiff to perform oral sex on Fr. O'Neill, as outlined above. At the time of these acts, Plaintiff was approximately seventeen years old. The abuse occurred during a tour of the Church of Annunciation, and again at Fr. O'Neill's cabin near Chaumont, New York.

108. The methods used by Fr. O'Neill to accomplish his sexual abuse of Plaintiff were substantially similar to methods known to Defendants to have been used previously by numerous other Scout Leaders and volunteers to accomplish sexual abuse of other boys.

109. Fr. O'Neill was a prolific abuser of minors with whom he had contact in his role as a Catholic priest.

110. Fr. O'Neill's sexual misconduct was foreseeable to Defendants.

111. As set out above, Defendant BSA knew for decades prior to Plaintiff's abuse that sexual predators of boys were continually infiltrating scouting and using the scouting program to accomplish their sexual abuse of boys. Defendants each knew or should have known that their scouting programs were attractive to pedophiles and knew the distinctive characteristics of scouting that render scouts particularly susceptible to pedophiles, including that:

a) Scouting provides the pedophile access to boys alone and away from their parents in secluded settings like campouts and overnight hikes. These settings place community volunteers and participants in close proximity to boys while they are particularly vulnerable, including while changing clothes, while bathing and during sleeping;

b) Defendants scouting program taught, encouraged and conditioned boys to strictly obey community volunteers and participants as trusted authorities;

c) Defendants' scouting program utilized and promoted the idea of (sometimes secretive) ceremonies, rituals, traditions and loyalty oaths, all of which Defendants knew or should have known could be manipulated by pedophile Scout Leaders, community volunteers and participants to help maintain a sexual abuse victim's silence and compliance; and,

d) Defendants' scouting program allowed pedophile Fr. O'Neill the opportunity to volunteer for and obtain access to boys of a certain age range which fit the pedophile's preference for victimization.

112. Defendants each knew or should have known the danger that pedophiles presented to boy scouts before Plaintiff was abused and knew or should have known the danger that Fr. O'Neill presented before Plaintiff was abused. Despite this knowledge, Defendants ignored the danger and permitted Fr. O'Neill and other pedophiles in scouting to prey upon young boys, including Plaintiff, by failing to warn of the danger and failing to implement reasonable policies to prevent and identify child sexual abuse in scouting.

113. Defendants also negligently permitted Fr. O'Neill as a scout mentor to sleep alone with Plaintiff while on a purported overnight scouting trip, causing Plaintiff to be injured by the sexual abuse.

114. As a direct and proximate cause of the Defendants' conduct, acts and omissions

described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income, and other damages, past and future. Plaintiff has been prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANTS THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

NEGLIGENCE/GROSS NEGLIGENCE

115. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

116. Defendants The Diocese of Rochester and Church of the Annunciation allowed Fr. O'Neill to have unsupervised and unlimited access to minor children while in a position of authority over them, including at Church of the Annunciation in Rochester, New York, located within the geographical confines of The Diocese of Rochester.

117. At all times material, Fr. O'Neill was employed by the Defendant The Diocese of Rochester and was an agent of the same.

118. At all times material, Fr. O'Neill was employed by the Church of the Annunciation and was an agent of the same.

119. At all times material, Fr. O'Neill remained under the direct supervision, employ and control of the Defendants The Diocese of Rochester and Church of the Annunciation.

120. Upon information and belief, before Plaintiff was sexually abused by Fr. O'Neill, Defendants had actual or constructive knowledge of material facts regarding Fr. O'Neill's sexual misconduct, impulses and behavior, and each had actual or constructive knowledge that he posed a sexual risk of harm to children.

121. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Fr. O'Neill's problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

122. Plaintiff Keith Souhrada was raised in a devout Roman Catholic family, regularly celebrated mass, received the sacraments, and participated in church-related activities. Plaintiff, therefore, developed great admiration, trust, reverence and respect for the Roman Catholic Church and its agents, The Diocese of Rochester and its agents, including the Bishop and Fr. O'Neill.

123. Defendants The Diocese of Rochester and Church of the Annunciation held Fr. O'Neill out as a qualified Roman Catholic priest who was safe with children, and undertook the education, religious instruction, and spiritual and emotional guidance of Plaintiff. The Bishop exercised a direct role over Plaintiff. Accordingly, Plaintiff placed trust in Defendants so that Defendants and their agents gained superiority and influence over Plaintiff. Defendants entered into a special relationship with the Plaintiff and his family.

124. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they assumed duties owed to Plaintiff and had superior knowledge about the risk that Fr. Robert O'Neill posed to Plaintiff, the risk of abuse in general in its programs, and/or the risks that their facilities posed to minor children. Defendants had the duty to protect the moral purity of Plaintiff and other Roman Catholic children within The Diocese of Rochester. Said Defendants owed Plaintiff a duty of care, because they had a special relationship

with Plaintiff. Said Defendants also owed Plaintiff a duty of care because they had a special relationship with Fr. O'Neill.

125. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they assumed that duty and because they solicited youth and parents for participation in their youth programs, including Plaintiff.

126. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they undertook custody of minor children, including Plaintiff.

127. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they promoted their facilities and programs as being safe for children, including Plaintiff.

128. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they held out their agents, including Fr. O'Neill, as safe to work with children.

129. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they encouraged parents and children, including Plaintiff and his parents, to spend time with their agents; and/or encouraged their agents, including Fr. O'Neill, to spend time with, interact with, and recruit children.

130. Defendants The Diocese of Rochester and Church of the Annunciation owed Plaintiff a duty of reasonable care because they encouraged Fr. O'Neill to mentor boys, to speak to young boys about the priesthood and to recruit young boys into the priesthood.

131. Defendants The Diocese of Rochester and Church of the Annunciation had a duty to Plaintiff to protect him from harm because Defendants' actions created a foreseeable risk of

harm to Plaintiff.

132. Defendants The Diocese of Rochester and Church of the Annunciation breached of their duties by exposing Plaintiff to a known pedophile.

133. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by exposing Plaintiff to a priest Defendants knew or should have known was a pedophile

134. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by recruiting, hiring, and maintaining Fr. O'Neill in a position of authority over children, including Plaintiff.

135. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by exposing Fr. Robert O'Neill to children, including Plaintiff.

136. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by leaving Fr. Robert O'Neill alone with children unsupervised, including Plaintiff.

137. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by inducing Plaintiff and his parents to entrust Plaintiff to Fr. O'Neill while participating in a boy scout community and church activity.

138. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to follow policies and procedures designed to prevent child sex abuse and/or failing to implement sufficient policies and procedures to prevent child sex abuse.

139. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working.

140. Defendants The Diocese of Rochester and Church of the Annunciation breached

their duties by failing to adequately inform families and children of the known risks of child sex abuse within The Diocese of Rochester and within scouting activities.

141. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by holding out their employees and agents, including Fr. O'Neill, as safe and wholesome for children, including Plaintiff, to be with.

142. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to investigate risks of child molestation.

143. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to properly train the workers at institutions and programs within Defendants' geographical confines.

144. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to have any outside agency test their safety procedures.

145. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to protect the children in their programs from child sex abuse and failing to adhere to the applicable standard of care for child safety.

146. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to investigate the amount and type of information necessary to represent the institutions, programs, and leaders and people as safe.

147. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to respond to and/or investigate information of improper conduct of employee or agent with children, including Fr. O'Neill.

148. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties by failing to properly train their employees to identify signs of child molestation by

fellow employees.

149. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty to use ordinary care in determining whether their facilities were safe and/or to determine whether they had sufficient information to represent their facilities as safe, including the cottage and location used by Fr. O'Neill.

150. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by recruiting, hiring, and maintaining Fr. O'Neill at their facilities.

151. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by maintaining a dangerous condition on the premises of their facilities and in the community (i.e., a priest Defendants knew or should have known posed a risk of pedophilic harm to children).

152. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by holding out Fr. Robert O'Neill as a safe person for interaction with children involved in Boy Scouts of America, when he was not safe.

153. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by failing to have sufficient policies and procedures to prevent abuse by their employee and agent in participation in community programs, including Boy Scouts of America, outside their facilities.

154. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by failing to investigate risks posed by participation of their employee in community programs, including Boy Scouts of America.

155. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by failing to investigate the amount and type of information necessary to

represent their employee's participation in community activities as safe.

156. Defendants The Diocese of Rochester and Church of the Annunciation breached their duty of care by failing to properly train their employees to identify signs of child molestation by fellow employees.

157. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties to Plaintiff by holding out clergy members, including Fr. Robert O'Neill, as safe, moral, and trustworthy people to represent the Defendants in community activities, including the Boys Scouts of America, and by failing to warn Plaintiff and his family of the risk that Fr. Robert O'Neill posed and the known risks of child sexual abuse by clerics in general.

158. Defendants The Diocese of Rochester and Church of the Annunciation failed to warn Plaintiff and his parents about any of the knowledge that the Defendants had about child sex abuse perpetrated by clergy or Fr. Robert O'Neill.

159. Defendants The Diocese of Rochester and Church of the Annunciation breached their duties to Plaintiff by failing to report Fr. Robert O'Neill's abuse of children to the police and law enforcement.

160. Defendants The Diocese of Rochester and Church of the Annunciation further breached their duties by hiding a pedophile and engaging in a cover-up of abuse perpetrated by Fr. O'Neill.

161. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known that some of the leaders and people working at Catholic institutions within The Diocese of Rochester were not safe for children.

162. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known that they did not have sufficient information about whether or not their leaders

and people working at Catholic institutions within The Diocese of Rochester, and as representatives of Defendant within the community, including the Boys Scouts of America, were safe around children.

163. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known that there was a risk of child sex abuse for children participating in community programs and activities involving participation of clergy within The Diocese of Rochester.

164. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in community programs and activities involving participation of clergy within The Diocese of Rochester and within the BSA.

165. Defendants The Diocese of Rochester and/or Church of the Annunciation knew or should have known that they had other agents who had sexually molested children. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known that child molesters have a high rate of recidivism. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known that there was a specific danger of child sex abuse for children participating in youth programs, including Boy Scouts of America.

166. Defendants The Diocese of Rochester and Church of the Annunciation held their leaders and agents out as people of high morals, as possessing immense power, teaching families and children to obey these leaders and agents, teaching families and children to respect and revere these leaders and agents, soliciting youth and families to their programs and programs supported by them, including the Boy Scouts of America, and holding out the people that worked in the programs as safe for children/youth.

167. Defendants The Diocese of Rochester and Church of the Annunciation made

negligent representations to Plaintiff and/or his family. Plaintiff and/or his family relied upon these representations, which resulted in Plaintiff being put in a vulnerable situation with Fr. Robert O'Neill who harmed him.

168. As a direct and proximate result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful employment, loss of income and other losses and damages, past and future.

169. As a direct and proximate result of Defendants' negligence, gross negligence and breaches of duty, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life.

170. As a direct and proximate result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

WHEREFORE, Plaintiff demands judgment against Defendant The Diocese of Rochester and Defendant St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS THE DIOCESE OF
ROCHESTER AND ST. FRANCES XAVIER CABRINI**

NEGLIGENT HIRING/RETENTION/SUPERVISION/DIRECTION

171. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

172. At all material times, Defendants The Diocese of Rochester and Church of the Annunciation, by and through their agents, managers, employees, and directors each owed a duty

to Plaintiff to use reasonable care to protect his safety, care, well-being, and health while he was under the care and custody or in the presence of the Defendants or their agents, including Fr. O'Neill. These duties encompassed the use of reasonable care in the hiring, retention, and supervision of Fr. O'Neill and otherwise providing a safe environment for children.

173. Prior to the sexual misconduct perpetrated by Fr. O'Neill upon Plaintiff, Defendants The Diocese of Rochester and Church of the Annunciation knew, or in the exercise of reasonable care, should have known, of the general problem of Catholic clergy engaging in sexual misconduct with children who were in The Diocese of Rochester and Church of the Annunciation programs, or who were participating in community programs supported by The Diocese of Rochester and Church of the Annunciation, such as the Boy Scouts of America.

174. Defendants owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Fr. Robert O'Neill in his role as priest, counselor, mentor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Fr. O'Neill did not use his assigned position to injure minors by sexual assault, abuse, or sexual contact in violation of the laws of the State of New York.

175. Defendants The Diocese of Rochester and Church of the Annunciation held the clergy employed by them out to be safe mentors for youth activities supported by The Diocese of Rochester and the Church of the Annunciation and entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

176. Father O'Neill sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff at a cabin while ostensibly conducting a youth activity in his role as a priest for The Diocese of Rochester and the Church of the Annunciation.

177. Defendants The Diocese of Rochester and Church of the Annunciation negligently hired, retained, directed, and supervised Fr. O'Neill, though they knew or should have known that Fr. O'Neill posed a threat of sexual abuse to minors.

178. Defendants The Diocese of Rochester and Church of the Annunciation knew or should have known of Father O'Neill's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

179. Prior to the sexual misconduct perpetrated by Fr. O'Neill upon Plaintiff, Defendants The Diocese of Rochester and Church of the Annunciation knew, or in the exercise of reasonable care, should have known, that Fr. O'Neill was unfit for the duties assigned to him, that he did not exhibit appropriate behavior with children, and he otherwise posed a risk of perpetrating unwanted sexual contact upon children, including Plaintiff.

180. Given actual or constructive knowledge of Fr. O'Neill's dangerous propensities, the Defendants had a duty to act reasonably in all decisions relating to his hiring, supervision, and retention as an employee.

181. Defendants The Diocese of Rochester and Church of the Annunciation were negligent in failing to properly supervise Father O'Neill.

182. Defendants failed to exercise reasonable care in one or more of their decisions to hire, supervise, and retain Fr. O'Neill and therefore exposed Plaintiff to an unreasonable risk of harm.

183. Defendants affirmed and ratified Fr. O'Neill's misconduct with Plaintiff. Given the actual and constructive knowledge of the likelihood that Fr. O'Neill and/or other clergy would engage children in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendants.

184. Defendants The Diocese of Rochester and Church of the Annunciation, and their agents, had superior knowledge of the likelihood that Fr. O'Neill would engage in unwanted sexual contact with children that he encountered in his position as a priest and community leader in Boy Scout programs, and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact.

185. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

186. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

187. At all relevant times, Defendants The Diocese of Rochester's and Church of the Annunciation's acts and omissions created an environment which fostered unwanted sexual contact and exploitation against the people it had a duty to protect, including Plaintiff.

At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to their care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

188. As a direct and proximate result of the negligence and gross negligence of Defendants The Diocese of Rochester and Church of the Annunciation, Plaintiff suffered damages, including but not limited to severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income, and other damages, past and future. Plaintiff has been prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and

will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. These injuries and damages are permanent and ongoing in nature.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

**THIRD CAUSE OF ACTION AGAINST DEFENDANTS THE DIOCESE OF
ROCHESTER AND ST. FRANCES XAVIER CABRINI**

RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

189. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if set forth fully herein.

190. Among other duties, Defendants employed Fr. Robert O'Neill to operate programs, including youth, altar boy and spiritual counseling programs at Church of the Annunciation, and to participate in community activities where Catholic youth participated. Fr. O'Neill was an agent of Defendants The Diocese of Rochester and Church of the Annunciation.

191. Defendants created a master-servant relationship with Fr. Robert O'Neill, employing him to interact and supervise children, including Plaintiff, participating in programs at Church of the Annunciation and to participate in communities where Catholic youth participated, including the local Boy Scout programs.

192. The unwanted contact by Fr. Robert O'Neill upon Plaintiff occurred during his community activities while performing duties expected of him as a priest on behalf of his employers.

193. The sexual contact by Fr. Robert O'Neill occurred in the course and scope of his employment with Defendants.

194. The sexual contact by Fr. Robert O'Neill was generally foreseeable to Defendants.

195. Upon information and belief, before Plaintiff was sexually abused by Fr. O'Neill, Defendants had actual or constructive knowledge of material facts regarding Fr. O'Neill's sexual misconduct, impulses and behavior but failed to act on that knowledge and exposed Plaintiff as a minor to Fr. O'Neill, thereby increasing the likelihood that Plaintiff would be harmed.

196. The sexual contact by Fr. Robert O'Neill was closely connected to what he was employed to do as a priest with Defendants, and/or was otherwise naturally incidental to his job duties.

197. Fr. Robert O'Neill's conduct was motivated, at least in part, by a desire to serve his employer's business interests or otherwise meet the objectives of his employment, however misguided.

198. Alternatively, Fr. Robert O'Neill's conduct constituted an authorized, minor deviation from his employment that was authorized and/or ratified by Defendants.

199. As a direct and proximate result of Fr. Robert O'Neill's conduct, Plaintiff has suffered damages as alleged herein for which Fr. O'Neill's employer is now liable.

WHEREFORE, Plaintiff Keith Souhrada demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini, for compensatory damages, costs and such other and further relief as this Court deems proper.

**FOURTH CAUSE OF ACTION AGAINST DEFENDANTS THE BSA AND
SENECA WATERWAYS**

NEGLIGENCE/GROSS NEGLIGENCE

200. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if set forth fully herein.

201. Defendant BSA and Defendant Council each owed Plaintiff a duty to protect Plaintiff based upon a special relationship between said Defendants and Plaintiff.

202. Defendant BSA and Defendant Council each breached the duty to protect Plaintiff.

203. Each Defendant's breach of its duty was a proximate cause of Plaintiff's injuries. As a direct and proximate result of the negligence and gross negligence of Defendant BSA and Defendant Council, Plaintiff suffered damages, including but not limited to severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income, and other damages, past and future. Plaintiff has been prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity and has incurred and/or will incur costs for treatment in the future. These injuries and damages are permanent and ongoing in nature.

WHEREFORE, Plaintiff Keith Michael Souhrada demands judgment against Defendant BSA and Defendant Council, for compensatory damages, costs and such other and further relief as this Court deems proper.

**FIFTH CAUSE OF ACTION AGAINST DEFENDANTS
THE BSA AND SENECA WATERWAYS**

NEGLIGENT ENGAGEMENT/RETENTION/SUPERVISION/DIRECTION

204. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if set forth fully herein.

205. At all times material hereto, Fr. O'Neill was engaged as a community volunteer participant by Defendants. As such, Fr. O'Neill was under Defendants' direct supervision, employ, and control when he committed the wrongful acts alleged herein. Fr. O'Neill engaged in the wrongful conduct while acting in the course and scope of his engagement and/or agency with each Defendant and/or accomplished the sexual abuse by virtue of his appointed authority. The sexually abusive acts committed by Fr. O'Neill against Plaintiff were committed while acting as his assigned scouting mentor.

206. Defendants BSA and Seneca Waterways, by and through their agents, servants and employees, became aware, or should have become aware, of problems indicating that Fr. O'Neill was an unfit agent with dangerous and exploitive propensities, yet Defendants failed to take any further action to remedy the problem and failed to investigate or remove Fr. O'Neill from working with children.

207. At all times material hereto, Defendant BSA and Defendant Council each had duties to exercise ordinary care in the engagement, retention, direction and supervision of Fr. O'Neill. Defendant BSA and Defendant Council each had duties to protect Plaintiff from harm by Fr. O'Neill. Defendant BSA and Defendant Council each breached said duties.

208. Defendants BSA and Seneca Waterways failed to exercise ordinary care in engagement, retention, direction of and supervision of Fr. O'Neill in his role as a volunteer community participant, and Defendants further failed to prevent the foreseeable misconduct of Fr. O'Neill from causing harm to others, including the Plaintiff herein.

209. As a direct and proximate result of the negligence and gross negligence of Defendant BSA and Defendant Council, Plaintiff suffered damages, including but not limited to severe and permanent psychological, emotional and physical injuries, shame, humiliation and the

inability to lead a normal life, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income, and other damages, past and future. Plaintiff has been prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity and has incurred and/or will incur costs for treatment in the future. These injuries and damages are permanent and ongoing in nature.

WHEREFORE, Plaintiff Keith Souhrada demands judgment against Defendant BSA and Defendant Council, for compensatory damages, costs and such other and further relief as this Court deems proper.

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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Rochester, New York

Dated: September 9, 2019

Respectfully submitted,



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VERIFICATION

STATE OF CALIFORNIA)
)
 COUNTY OF SAN DIEGO) ss:

Keith Souhrada affirms under penalty of perjury, that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to the affirmant's own knowledge, except at to those matters therein stated to be on information and belief and as to these matters affirmant believes them to be true.

Dated: San Diego, California
 August 14, 2019



Keith Souhrada